IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7779 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HIMANSHUBHAI KIRTIKUMAR PARIKH - P.O.A. MANUBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7779 of 1999

MR MA KHARADI for Petitioner No. 1

MR HD DAVE, AGP for Respondent Nos. 1, 2 & 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 23/07/2003

ORAL JUDGEMENT

1. This petition seeks direction by way of a mandamus to quash and set aside the order dated 12-05-1999 (Annexure-B) made by the competent authority under the Urban Land (Ceiling & Regulations) Act, 1976 (hereinafter referred to as 'the Act').

2. The case of the petitioner as presented by Mr.M.A.Kharadi, learned advocate for the petitioner, is that the petitioner who is the owner of the land bearing Survey No.194, admeasuring 1702 sq. mtrs., in Ranip Village is held by the petitioner having 17% share in the firm of M/s.Amrutlal Hargovandas. It appears that in relation to the said land the petitioner filed Form No.1 under Section 6(1) of the Act and on 28-04-1989 the competent authority came to the conclusion that out of the total holding amounting 7424 sq. mtrs., land admeasuring 5473 sq. mtrs. are excess / vacant lands and are liable to be so declared under the said Act. In pursuance of the said order the competent authority issued directions to the Talati-cum-Mantry by impugned communication dated 12-05-1999 to make necessary entry in the Revenue Record as regards declaration of excess / vacant lands and possession thereof having been taken over by the Government. According to the petitioner, the lands are in possession and occupation of the petitioner and the petitioner is carrying on agricultural operations on the said lands. Therefore, according to the petitioner, by virtue of provisions of Urban Land (Ceiling & Regulations) Repeal Act, 1999 (hereinafter referred to as 'the Repeal Act'), the proceedings have abated in favour of the petitioner and the direction to the Talati-cum-Mantry to mutate the necessary entry was required to be quashed.

3. As against this Mr.H.D.Dave, learned A.G.P. appearing on behalf of the respondents, pointed out that on 26-03-1998 a panchnama of possession had been executed. A copy of the said panchnama alongwith the accompanying map has been handed over to the learned advocate for the petitioner as well as a copy has been placed on record. In the circumstances, it was submitted by Mr.Dave that it was not open to the petitioner to contend that possession having not been taken over by virtue of the provisions of the Repeal Act, the petitioner was entitled to a declaration to the effect that there was no vesting in favour of the Government and the Talati-cum-Mantry could not effect consequential mutation in the Revenue Record.

4. It is common ground between the parties as per the provisions of the Act there would be four stages when the Act operates in relation to the lands which have been shown in Form No.1 filed under Section 6(1) of the Act. The first stage is declaration of the land which has to be treated as excess / vacant land under the provisions of the Act. The second stage is vesting of the land in favour of the Government. The third stage is regarding

taking over possession by the Government. The last and the fourth stage is payment of compensation. It was contended by Mr.Kharadi that by virtue of the provisions of Section 3(2) of the Repeal Act, the petitioner may be directed to refund the compensation, if any, received by the petitioner. In fact, according to the learned advocate, the case of the petitioner was that the petitioner had not even received any compensation, nor was the possession of the land taken over from the petitioner and hence, the proceedings abated in favour of the petitioner in light of the Repeal Act.

5. This contention is not available to the petitioner in light of the specific panchnama which has been placed on record. There is no evidence to the contrary, except the bare averment by the petitioner regarding possession.

6. In the circumstances, it is not possible to accept the claim on behalf of the petitioner that the petitioner is in possession of the lands in question and hence, by virtue of the Repeal Act, the petitioner would be entitled to retain the possession and the proceedings would abate in favour of the petitioner.

7. In the circumstances, the petition is rejected. Rule discharged. There shall be no order as to costs.

Sd/-

[D.A.MEHTA, J]

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'Bhavesh'